

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

554J0126

## HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB 1188** - 01/27/2004

Introduced by: Representatives Konold, Bartling, Craddock, Heineman, Lange, Michels, Smidt, and Williamson and Senators Olson (Ed), Brown, Dempster, Dennert, Greenfield, Koetzle, and McCracken at the request of the Executive Board of the Legislative Research Council

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the franchises of  
2 dealers in vehicles, implements, and equipment.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, dealer, means any person, or  
7 the person's successor who, for commission or with intent to make a profit or gain, sells,  
8 exchanges, rents, leases with the option to purchase, or offers or attempts to negotiate a sale or  
9 exchange any merchandise as defined by this chapter, or who is engaged wholly or in part in the  
10 business of selling any such merchandise.

11 Section 2. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as  
12 follows:

13 For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, merchandise, means:

14 (1) Automobiles, trucks, motorcycles, and accessories;



- (2) Farm tractors, farm implements, farm machinery, and attachments;
- (3) Industrial and construction equipment and attachments;
- (4) Boats and personal watercraft;
- (5) Snowmobiles and all-terrain vehicles;
- (6) Office furniture, equipment, supplies, and attachments; and
- (7) Outdoor power equipment and attachments.

Section 3. That chapter 37-5 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of §§ 37-5-1 to 37-5-12, inclusive, the term, contract, means any written franchised agreement, sales agreement, dealer agreement, or security agreement, or other form of agreement or arrangement of like effect and its successor.

Section 4. That § 37-5-1 be amended to read as follows:

37-5-1. It is a Class 1 misdemeanor for any manufacturer, factory, branch, distributor, or distributor-branch, or any field representative, officer, agent, or representative of any of them to coerce or attempt to coerce any dealer ~~in motor vehicles, motorcycles, industrial and construction equipment, office furniture, equipment, and supplies, farm tractors, or farm implements,~~ to purchase or accept delivery of any ~~motor vehicle or vehicles, parts, or accessories therefor~~ merchandise, repair parts for the merchandise, or any other commodity ~~which that~~ which has not been ordered by ~~such the~~ such the dealer ~~or;~~ or by threatening to cancel or terminate any franchise, agency, arrangement, or agreement existing between such manufacturer, factory, branch, distributor, distributor-branch, or any field representative, officer, agent, or representative of any of them and ~~such the~~ such the dealer or by any other unfair means or by duress of any kind.

Section 5. That § 37-5-2 be amended to read as follows:

1        37-5-2. It is a Class 1 misdemeanor for any manufacturer, factory, branch, distributor, or  
2 distributor-branch, or any field representative, officer, agent, or representative of any of them  
3 to coerce or attempt to coerce any dealer ~~in motor vehicles, motorcycles, industrial and~~  
4 ~~construction equipment, office furniture, equipment, and supplies; farm tractors; or farm~~  
5 ~~implements~~, to enter into any agreement with ~~such~~ the manufacturer, factory, branch, distributor,  
6 or distributor-branch, or any field representative, officer, agent, or representative of any of them,  
7 or to assign, sell, or dispose of any contract or property in any way, or to expend any money or  
8 do any other act unfair to such dealer; by threatening to cancel or terminate any franchise,  
9 agency, arrangement, or agreement existing between such manufacturer, factory, branch,  
10 distributor, distributor-branch, or any field representative, officer, agent, or representative of any  
11 of them and ~~such~~ the dealer or by any other unfair means or by duress of any kind.

12        Section 6. That § 37-5-3 be amended to read as follows:

13        37-5-3. It is a Class 1 misdemeanor for any manufacturer, factory, branch, distributor, or  
14 distributor-branch, or any field representative, officer, agent, or representative of any of them,  
15 unfairly, without due regard to the equities of the dealer and without just provocation, to cancel  
16 the franchise of any dealer ~~in motor vehicles, motorcycles, industrial and construction~~  
17 ~~equipment; office furniture, equipment, and supplies; farm tractors; or farm implements.~~

18        Section 7. That § 37-5-5 be amended to read as follows:

19        37-5-5. If any ~~person, firm, or corporation, or their successors, engaged in the business of~~  
20 ~~selling and retailing farm implements or machinery and repair parts for farm implements or~~  
21 ~~machinery, or in the business of selling and retailing industrial and construction equipment and~~  
22 ~~repair parts for industrial and construction equipment, or in the business of selling and retailing~~  
23 ~~outdoor power equipment and repair parts for outdoor power equipment, or in the business of~~  
24 ~~selling and retailing office furniture, equipment, and supplies and repair parts for office~~

1 ~~furniture, equipment, and supplies, or in the business of selling and retailing automobiles,~~  
2 ~~trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles or repair~~  
3 ~~parts for automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or~~  
4 ~~snowmobiles~~ dealer enters into a written contract evidenced by franchised agreement, sales  
5 agreement, dealer agreement, or security agreement, or other form of agreement or arrangement  
6 of like effect, the term, contract, as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the  
7 foregoing and their successors. If such person, firm, or corporation, or their successors; if the  
8 dealer maintains a stock of ~~parts or complete or whole machines, or attachments~~ merchandise  
9 or repair parts for the merchandise with any wholesaler, manufacturer, or distributor ~~of farm~~  
10 ~~implements or machinery or repair parts therefor, or industrial and construction equipment or~~  
11 ~~repair parts therefor, or outdoor power equipment or repair parts therefor, or office furniture,~~  
12 ~~equipment, and supplies or repair parts therefor, or automobiles, trucks, motorcycles, boats,~~  
13 ~~personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor,;~~ and if either  
14 the wholesaler, manufacturer, or distributor, or their successors, or the ~~retailer, or successor~~  
15 dealer, desires to cancel or discontinue the contract, ~~such;~~ the wholesaler, manufacturer, or  
16 distributor, or successor, shall pay to the ~~retailer, or successor~~ dealer, unless the ~~retailer, or~~  
17 ~~successor,~~ dealer should desire to keep the merchandise, a sum equal to one hundred percent of  
18 the net cost of all current unused complete ~~farm implements, machinery and attachments,~~  
19 ~~industrial and construction equipment and attachments, outdoor power equipment and~~  
20 ~~attachments, office furniture, equipment, and supplies, and attachments, and automobiles,~~  
21 ~~trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles~~  
22 merchandise, including transportation and reasonable assembly charges which have been paid  
23 by the ~~retailer~~ dealer and ninety-five percent of the current net prices on repair parts, including  
24 superseded parts, listed in a current price list or catalog which parts had previously been

1 purchased from the wholesaler, manufacturer, or distributor, or predecessor, and held by the  
2 ~~retailer~~ dealer on the date of the cancellation or discontinuance of the contract. The wholesaler,  
3 manufacturer, or distributor, or successor, shall also pay the ~~retailer~~ dealer a sum equal to five  
4 percent of the current net price of all parts returned for the handling, packing, and loading of the  
5 parts back to the wholesaler, manufacturer, or distributor and pay any freight charges that were  
6 paid by the dealer. Upon the payment of the sum ~~equal to one hundred percent of the net cost~~  
7 ~~of the farm implements, machinery and attachments, industrial and construction equipment and~~  
8 ~~attachments, outdoor power equipment and attachments, office furniture, equipment, and~~  
9 ~~supplies, and attachments, and automobiles, trucks, motorcycles, boats, personal watercraft,~~  
10 ~~all-terrain vehicles, and snowmobiles, plus transportation and reasonable assembly charges and~~  
11 ~~ninety-five percent of the current net prices on repair parts, plus five percent handling and~~  
12 ~~loading costs on repair parts only, plus freight charges which have been paid by the retailer, or~~  
13 ~~automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or~~  
14 ~~snowmobiles, plus freight charges, or repair parts therefor, plus five percent handling and~~  
15 ~~loading costs on repair parts only~~ required by this section, the title to the farm implements, farm  
16 machinery, industrial and construction equipment, outdoor power equipment, office furniture,  
17 equipment, and supplies, and repair parts, or automobiles, trucks, motorcycles, boats, personal  
18 watercraft, all-terrain vehicles, or snowmobiles, or parts therefor, any merchandise or repair  
19 parts for the merchandise shall pass to the manufacturer, wholesaler, or distributor making the  
20 payment, and the manufacturer, wholesaler, or distributor, is entitled to the possession of the  
21 farm implements, industrial and construction equipment, outdoor power equipment, office  
22 furniture, equipment, and supplies, or automobiles, trucks, motorcycles, boats, personal  
23 watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor merchandise or the  
24 repair parts for the merchandise.

Section 8. That § 37-5-5.5 be amended to read as follows:

37-5-5.5. A wholesaler, manufacturer, or distributor shall also repurchase from the ~~retailer~~ dealer and the ~~retailer~~ dealer shall sell any specialized computer hardware or software, specialized tool, or signage which the wholesaler, manufacturer, or distributor required the ~~retailer~~ dealer to purchase or lease as part of the ~~retail~~ dealer agreement. Upon delivery to the wholesaler, manufacturer, or distributor of any such specialized computer hardware or software, tool, or signage, the wholesaler, manufacturer, or distributor shall pay to the ~~retailer~~ dealer:

(1) For such computer hardware and software specifically required by the wholesaler, manufacturer, or distributor purchased within the last five years, the net cost less twenty percent per year depreciation. For purposes of this subdivision, the term, software, means software that is sourced from the wholesaler, manufacturer, or distributor, or its approved vendor, to meet the minimum requirements of the wholesaler, manufacturer, or distributor;

(2) For current logoed signage constituting the principal outdoor signage required by the wholesaler, manufacturer, or distributor, identifying the ~~retailer~~ dealer as its representative, the original net cost to the dealer less fifteen percent per year, but in no case less than twenty percent of the original net cost to the dealer;

(3) For any specialized diagnostic or repair tool required by the wholesaler, manufacturer, or distributor which is unique to the product line and in complete, usable condition, seventy-five percent of the original net cost to the dealer if within ten years of purchase by the ~~retailer~~ dealer, provided that any new, unused specialized repair ~~tools~~ tool applicable to the products of the wholesaler, manufacturer, or distributor shall be purchased at one hundred percent of the original net cost to the dealer.

Section 9. That § 37-5-7 be amended to read as follows:

37-5-7. The prices of ~~farm implements, machinery, and repair parts therefor, and of~~  
~~industrial and construction equipment and repair parts therefor, and outdoor power equipment~~  
~~and repair parts thereof, and of office furniture, equipment, and supplies and repair parts~~  
~~therefor, and of automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles,~~  
~~or snowmobiles, and repair parts therefor,~~ merchandise required to be paid to any ~~retail~~ dealer  
as provided in § 37-5-5, shall be determined by taking one hundred percent of the net cost ~~on~~  
~~farm implements, machinery, and attachments, industrial and construction equipment and~~  
~~attachments, outdoor power equipment and attachments, office furniture, equipment, and~~  
~~supplies and attachments, automobiles, trucks, motorcycles, boats, personal watercraft,~~  
~~all-terrain vehicles, and snowmobiles~~ of the merchandise, and ninety-five percent of the current  
net price of repair parts ~~therefor~~ for the merchandise as shown upon the manufacturer's,  
wholesaler's, or distributor's price lists or catalogues in effect at the time the contract is canceled  
or discontinued ~~and specialized. The prices for any specialized~~ computer hardware and software,  
specialized ~~tools~~ tool, or signage shall be as specified in § 37-5-5.5. For purposes of §§ 37-5-5  
to 37-5-9, inclusive, if any ~~retailer, of farm implements or machinery or repair parts therefor,~~  
~~industrial and construction equipment and repair parts therefor, and outdoor power equipment~~  
~~and repair parts therefor,~~ dealer has actual proof of purchase of any repair parts or other  
merchandise from any manufacturer, wholesaler, or distributor, or its predecessor, the repair  
parts even though not currently listed in any price list or catalog and all other merchandise,  
purchased within ten years of the dealership cancellation or termination shall be repurchased at  
the original purchase price.

Section 10. That § 37-5-7.1 be amended to read as follows:

37-5-7.1. The payments to be made to the ~~retailer~~ dealer pursuant to §§ 37-5-5 to 37-5-9,

1 inclusive, shall be made no later than sixty days from the date the merchandise is received by  
2 the wholesaler, manufacturer, or distributor and shall be accompanied by a final detailed  
3 statement of account thereon.

4 Section 11. That § 37-5-8 be amended to read as follows:

5 37-5-8. If any manufacturer, wholesaler, or distributor of ~~farm machinery, farm implements,~~  
6 ~~and repair parts for farm machinery, and farm implements, or of industrial and construction~~  
7 ~~equipment and repair parts for industrial and construction equipment, outdoor power equipment~~  
8 ~~and repair parts for outdoor power equipment, or of office furniture, equipment, and supplies~~  
9 ~~and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks,~~  
10 ~~motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts~~  
11 ~~therefor~~ merchandise or repair parts for the merchandise, or their successors, upon cancellation  
12 of a contract by either a ~~retailer~~ dealer or a manufacturer, wholesaler, or distributor, or their  
13 successor, fails or refuses to make payment to the dealer as is required by § 37-5-5, or refuses  
14 to supply ~~farm machinery, farm implements, and repair parts for farm machinery and farm~~  
15 ~~implements, or industrial and construction equipment, and repair parts for industrial and~~  
16 ~~construction equipment, outdoor power equipment and repair parts for outdoor power~~  
17 ~~equipment, or of office furniture, equipment, and supplies and repair parts for office furniture,~~  
18 ~~equipment, and supplies, or automobiles, trucks, motorcycles, boats, personal watercraft,~~  
19 ~~all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer of the products, who~~  
20 ~~may have a retail sales contract dated after July 1, 1969, in the case of contracts covering farm~~  
21 ~~machinery, implements and attachments or automobiles and trucks, or after July 1, 1970, in the~~  
22 ~~case of contracts covering industrial and construction equipment and attachments, or after~~  
23 ~~July 1, 2001, in the case of the contracts covering outdoor power equipment and attachments,~~  
24 ~~or after July 1, 1995, in the case of contracts covering office furniture, equipment, and supplies,~~



1 ~~or after July 1, 1973, in the case of contracts covering motorcycles, or after July 1, 2000, in the~~  
2 ~~case of contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, or~~  
3 ~~a contract with no expiration date or a continuing contract in force or effect on July 1, 1969, in~~  
4 ~~the case of contracts covering farm machinery, implements and attachments or automobiles and~~  
5 ~~trucks, or in force and effect on July 1, 1970, in the case of contracts covering industrial and~~  
6 ~~construction equipment and attachments, or in force and effect on July 1, 1995, in the case of~~  
7 ~~contracts covering office furniture, equipment, and supplies, or in force and effect on July 1,~~  
8 ~~2001, in the case of the contracts covering outdoor power equipment and attachments, or in~~  
9 ~~force and effect on July 1, 1973, in the case of contracts covering motorcycles, or after July 1,~~  
10 ~~2000, in the case of contracts covering boats, personal watercraft, all-terrain vehicles, or~~  
11 ~~snowmobiles, with the manufacturer, wholesaler, or distributor~~ merchandise or repair parts for  
12 the merchandise to a dealer, the manufacturer, wholesaler, or distributor, or their successor, is  
13 liable in a civil action to be brought by the ~~retailer~~ dealer for one hundred percent of the net cost  
14 of the ~~farm implements, machinery and attachments, industrial and construction equipment and~~  
15 ~~attachments, outdoor power equipment and attachments, office furniture, equipment, and~~  
16 ~~supplies and attachments, automobiles and trucks, and motorcycles, or after July 1, 2000, in the~~  
17 ~~case of contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles~~  
18 merchandise, plus transportation charges which have been paid by the ~~retailer~~ dealer and  
19 ninety-five percent of the current net price of repair parts for the merchandise, plus five percent  
20 for handling and loading plus freight charges which have been paid by the ~~retailer~~, dealer, and  
21 plus charges for any specialized computer hardware and software, specialized tool, and signage  
22 as specified in § 37-5-5.5.

23 This section applies to the following contracts:

24 (1) In the case of any contract covering farm implements, machinery, and attachments

or automobiles and trucks, any contract dated after July 1, 1969, and any contract with no expiration date or any continuing contract in effect on July 1, 1969;

(2) In the case of any contract covering industrial and construction equipment and attachments, any contract dated after July 1, 1970, and any contract with no expiration date or any continuing contract in effect on July 1, 1970;

(3) In the case of any contract covering motorcycles, any contract dated after July 1, 1973, and any contract with no expiration date or any continuing contract in effect on July 1, 1973;

(4) In the case of contracts covering office furniture, equipment, and supplies, any contract dated after July 1, 1995, and any contract with no expiration date or any continuing contract in effect on July 1, 1995;

(5) In the case of any contract covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, any contract dated after July 1, 2000, and any contract with no expiration date or any continuing contract in effect on July 1, 2000; and

(6) In the case of any contract covering outdoor power equipment and attachments, any contract dated after July 1, 2001, and any contract with no expiration date or any continuing contract in effect on July 1, 2001.

Section 12. That § 37-5-9 be amended to read as follows:

37-5-9. In the event of the death of the ~~retail~~ dealer or majority stockholder in a corporation operating a ~~retail~~ dealership in the business of selling ~~and retailing farm implements or repair parts for farm implements, or in the business of selling industrial and construction equipment or repair parts therefor, or in the business of selling outdoor power equipment or repair parts therefor, or in the business of selling and retailing office furniture, equipment, and supplies or repair parts therefor, or in the business of selling and retailing automobiles, trucks, motorcycles,~~

1 ~~boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor~~  
2 merchandise or repair parts for merchandise, the wholesaler, distributor, or manufacturer who  
3 supplied the merchandise, or its successor, shall repurchase from the heir or heirs of the ~~retail~~  
4 dealer or majority stockholder the merchandise at a sum equal to one hundred percent of the net  
5 cost of all current unused complete ~~farm implements, machinery and attachments, industrial and~~  
6 ~~construction equipment and attachments, outdoor power equipment and attachments, office~~  
7 ~~furniture, equipment, and supplies and attachments, and automobiles, trucks, motorcycles, boats,~~  
8 ~~personal watercraft, all-terrain vehicles, and snowmobiles~~ merchandise, including transportation  
9 and reasonable assembly charges ~~which~~ that have been paid by the ~~retailer~~ dealer, and  
10 ninety-five percent of the current net prices on repair parts for the merchandise, including  
11 superseded parts, listed in current price lists or catalogues, plus a sum equal to five percent of  
12 the current net price of all parts returned for handling, packing, and loading of the parts, and any  
13 specialized computer hardware or software, specialized tool, or signage as specified in  
14 § 37-5-5.5, unless the heir or heirs agree to continue to operate the ~~retail~~ dealership. If the heir  
15 or heirs do not agree to continue to operate the ~~retail~~ dealership, it is deemed a cancellation or  
16 discontinuance of contract by the ~~retailer~~ dealer under the provisions of § 37-5-5, and as such  
17 the heir or heirs may exercise any rights and privileges under §§ 37-5-5 to 37-5-9, inclusive.